



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200411047

DEC 15 2003

T. EP. RA. T4

Legend:

IRA X = *****

Section 403(b) = *****
Amount D = \$*****
Bank C = *****

University E = *****

Dear *****:

This is in response to a request submitted on your behalf by your authorized representative by letter dated May 22, 2003, as supplemented on October 31, 2003, for a waiver of the 60-day rollover requirement contained in section 408(d)(3)(I) of the Internal Revenue Code ("Code").

The following facts and representation have been submitted under penalties of perjury to support the ruling request.

You are a professor at University E and you wanted to make a gift to the University E. On January 8, 2003, you discussed making a direct transfer of Amount D, in cash, from IRA X to Bank C for the benefit of University E

with the custodian of IRA X. Before you authorized the transfer, the representative of the custodian did not advise you the transfer would be a taxable distribution. Before the 60-day period ended you realized the amount transferred on January 8th would be taxable, and you immediately contacted University E to request a return of the funds transferred from IRA X so that you would either be able to return the funds to IRA X or make a rollover contribution to a section 403(b) annuity plan. University E did not immediately return the funds, but asked for time to consult with their attorney and advisors. Due to a delay by University E in returning the funds, neither the return of the funds to IRA X, nor a rollover contribution could be completed before the expiration of 60 days from the initial transfer of funds.

You were ultimately able to obtain an agreement with University E to authorize Bank C to transfer Amount D to the Section 403(b) annuity program, which was completed on May 7, 2003.

You never took possession of the funds transferred from your IRA X account and did not use the IRA X account funds in any way. A rollover contribution to the new Section 403(b) annuity program was completed by a direct transfer of funds on May 12, 2003, the earliest date possible within your control after the error was discovered.

Based on the above facts, you request a ruling that the Service waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X because the failure to waive such requirement would be against equity or good conscience under the provisions of section 408(d)(3)(I) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

For purposes of clause (ii), the term “eligible retirement plan” means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B). Section 402(c)(8)(B)(vi) of the Code provides, in part, that an “eligible retirement plan” includes an annuity contract described in section 403(b).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA, which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the

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reasonable control of the individual subject to such requirement. Section 402(c)(3)(B) describes a similar rule. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The 1-year rollover limitation under section 408(d)(3)(B) of the Code was not violated in this case.

Information presented demonstrates that the IRA X funds were not used for another purpose (e.g., current expenses or invested) and you could not reasonably satisfy the requirement that Amount D be deposited in an IRA or a section 403(b) annuity within 60 days of the distribution from IRA X. A section 403(b) annuity is an "eligible retirement plan" for purposes of this transfer. The failure to deposit Amount D into a section 403(b) annuity within the 60-day period was beyond your reasonable control, and the failure to waive the 60-day requirement would be against equity or good conscience.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. The transfer of Amount D to the Section 403(b) annuity on May 12, 2003, is considered a valid rollover, provided all other requirements of section 408(d)(3) of the Code are satisfied (except the 60-day requirement with respect to such contribution was not satisfied).

Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

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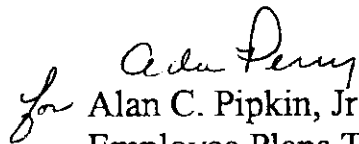
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney filed with this office.

If you have any questions please contact:

Sincerely yours,


for Alan C. Pipkin, Jr., Manager
Employee Plans Technical Group 4

Enclosures:

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Notice of Intention to Disclose, Notice 437